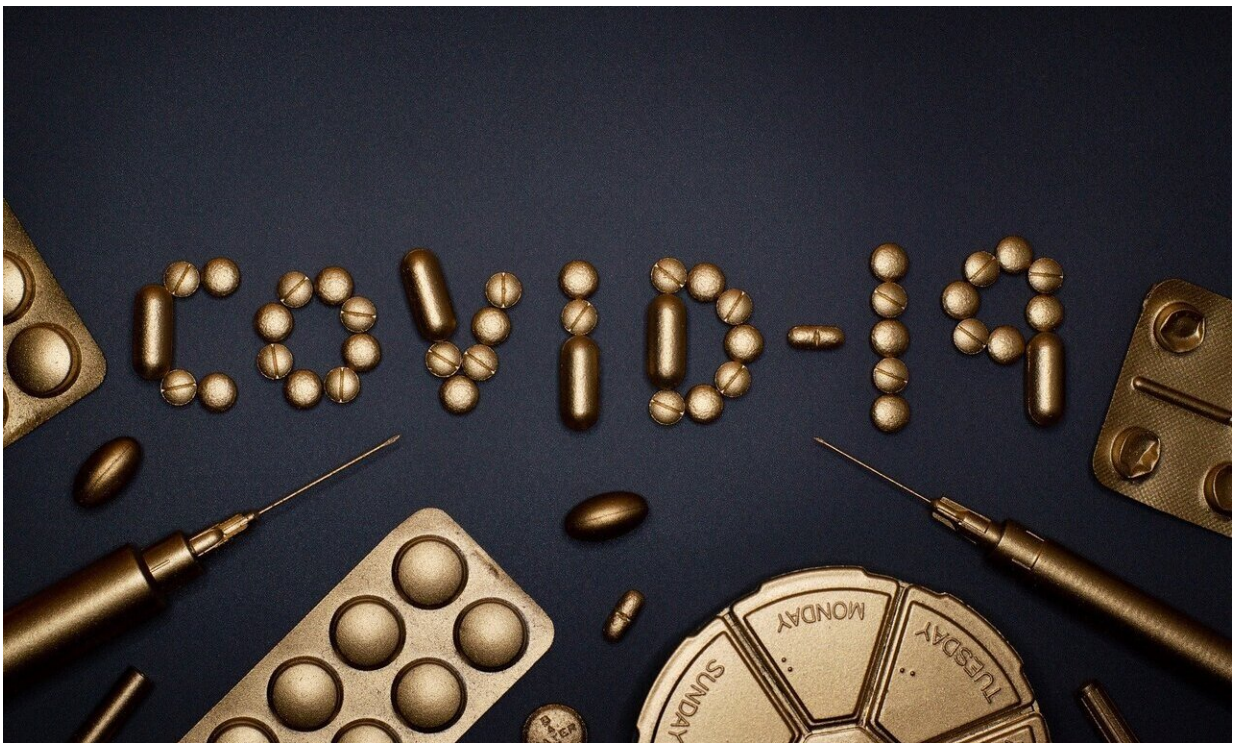


How a combination of COVID lawsuits and media coverage keeps misinformation churning

July 23 2023, by Darius Tahir



Credit: CC0 Public Domain

Public health has had its day in court lately. And another day. And another day.

Over the course of the pandemic, lawsuits came from every direction, questioning [public health](#) policies and hospitals' authority. Petitioners argued for care to be provided in a different way, they questioned mandates on mask and vaccine use, and they attacked restrictions on gatherings.

Historically, "there's been nothing but a cascade of supportive deference to public health," said Lawrence Gostin, a professor specializing in public health law at Georgetown University. That changed during the pandemic. "It's the opposite. It's been a torrent."

Even as COVID-19 wanes, [lawyers](#) representing the health care sector predict their days in court aren't about to end soon. A group of litigators and [media companies](#), among others, are eyeing policy changes and even some profits from yet more lawsuits.

Because such groups can reach millions of people, public health advocates like Gostin and Brian Castrucci, president of the de Beaumont Foundation, a public health nonprofit, suggest that the result, beyond creating legal setbacks, could spread more misinformation about their work. The imprimatur of a lawsuit, they think, can help spread vaccine skepticism or other anti-public health beliefs, if only through news coverage. "You know, lawsuits have a galvanizing effect," Gostin said. "They tend to shape public opinion."

Lawyers are organizing to promote their theories. Late in March, a group of them gathered in Atlanta for a debut COVID Litigation Conference to swap tips on how to build such cases. "Attention, Atlanta lawyers!" proclaimed an ad promoting the event. "Are you ready to be a part of the fastest-growing field of litigation?"

The conference was sponsored in part by the Vaccine Safety Research Foundation, which was established on vaccine-skeptical views. The

gathering promised to share legal strategies for suing federal and state public health agencies over COVID policies, as well as hospitals and pharmaceutical firms for alleged malfeasance.

It's the sort of thing that has people like Gostin paying attention. "It's very worrisome," he said. Even if lawsuits don't succeed, it could make hospitals and public health officials gun-shy, he said. At the height of the pandemic, lawyers were successfully forcing hospitals to administer ivermectin to treat COVID—despite many gold-standard, randomized, controlled trials demonstrating it wasn't particularly useful.

The conference was a good way to meet like-minded advocates, explained Steven Warshawsky, a New York lawyer who attended. "There's networking and an effort to create a legal community that's knowledgeable," he said. And colleagues can also "spread the word about different legal angles." Indeed, panels covered subjects ranging from licensure to hospital negligence, and allegations of vaccine injuries.

The conference was organized by Steve Kirsch, a wealthy San Francisco Bay Area tech executive, who describes himself as a "truth teller" regarding COVID vaccines and policies. He has persistently raised questions about masks and vaccines and other standard public health measures. The conference, he said, is meant to help encourage lawyers to further that stance. He said he hopes that "the lawyers are successful in getting large settlements" because "it will incentivize other lawyers" to bring their own suits against pharmaceutical firms and government agencies alike.

He's been known to tweet about situations in which he, an unmasked person, encountered masked counterparts. For example, during a flight, he offered \$100,000 to an airplane seatmate to remove her mask. (He said he did it to test the level—and potential hypocrisy—of people's attachment to masks.)

Kirsch's legal entrepreneurship is on full display in his newsletter: Individuals seeking his comments can check boxes if they are lawyers who would represent him in various lawsuits against the [federal government](#) on vaccine-related issues.

Visitors can also book his time in 15-minute increments, at \$500 a pop; subscriptions to his newsletter—of which he claims "tens of thousands"—are \$50 a year. (He says he donates the subscription income.)

The lawyers' conference attracted speakers well known in the COVID litigation world. One, Robert Malone, did early work on messenger RNA and has now grown skeptical over alleged defects in COVID vaccines. (They've been approved by the FDA after large trials.) Malone and other plaintiffs threatened Twitter last year with a lawsuit seeking to reverse a ban on spreading misinformation. After taking a media tour, he's now back on the social media network.

For public health officials, it's not merely the potential outcome of the courts' rulings but also the publicizing of the theories that poses a risk.

"Even one win, despite countless losses, for some will provide supposed evidence and vindication that questions need to be answered, liability needs to be assigned, or a wrong needs to be righted," Castrucci told KFF Health News. "But the decision of any one trial can't and shouldn't supplant the findings of clinical trials enrolling nearly 70,000 Americans."

"I think this is part of a grander destabilization of public [health](#), through the judicial system," Castrucci said.

Readers wanting to connect favored theories to courtroom drama through the media have no lack of opportunity. Take The Daily Wire, an

online publication featuring conservative political commentator Ben Shapiro. The company was a plaintiff in one federal lawsuit, part of a barrage of successful litigation, challenging the Occupational Safety and Health Administration's policy of giving large businesses an option of either requiring their employees to get vaccinated or test weekly for COVID. The regulation was stymied by the Supreme Court and later withdrawn by the agency.

The lawsuit served a second purpose. It provided a continual, evolving theme for Facebook ads promoting the outlet's fight—and asking viewers to subscribe, sign petitions, or purchase merchandise. In a November 2021 ad, Shapiro asserted there was "no bigger fan" of vaccines than he. But any pro-vaccine claim was not a centerpiece of future ads, which inveighed against mandates, vaccine passports, and the like. The Daily Wire claimed in February 2022 that it was bringing in \$100 million in annual revenue.

The publication made COVID messaging, particularly around lawsuits or legal matters, a frequent theme of its advertising. One ad, for example, mentioned how police were enforcing vaccine passports in "certain cities"—it didn't specify which cities. But The Daily Wire published an article about police checking such passports in Paris, not the United States. The media outlet didn't respond to multiple requests for comment.

In all, KFF Health News found the publication had at least 10 million ad impressions on Meta platforms—Facebook and Instagram—from October 2021 to February 2023 concerning lawsuits, mandates, lab leaks, and other COVID-related topics.

Earlier, conservative media groups were happy to contribute by writing amicus briefs in support of certain cases. But there's now plenty of right-wing voices trying to seize an audience, said A.J. Bauer, an assistant

professor of journalism studying conservative media at the University of Alabama. "We're seeing an oversaturated media space, with a lot of competition," especially on the right, Bauer said. As such, he said, they need to stand out—even if it means embracing "stunts," like participating directly in lawsuits.

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